

REMARKS

Status of the Claims

Claims 1-6, 8, and 16 are pending. Claims 1, 6, and 16 are currently amended. Reconsideration and allowance of all of the pending claims is respectfully requested.

New matter is not being added to the application by way of this amendment. The amendments to claims 1, 6, and 16 are supported at page 22, line 2 of the specification. Accordingly, no new matter is added and entry of this amendment is respectfully requested.

Claim Rejections – 35 U.S.C. §103

Claims 1-6, 8 and 16 stand rejected under 35 U.S.C. §103 as being unpatentable over **Atkinson '466** (U.S. Patent No. 4,900,466). Applicants respectfully traverse this rejection for the following reasons.

1. Legal Standard for Determining Prima Facie Obviousness

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The Supreme Court of the United States has recently held that the teaching, suggestion, motivation test is a valid test for obviousness, but one which cannot be too rigidly

applied. See *KSR International Co. v Teleflex Inc.*, No. 04-1350, slip op. at 11 (U.S. April 30, 2007).

The teaching or suggestion to make the claimed combination and the reasonable expectation of success cannot be found in applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991). The level of skill in the art cannot be relied upon to provide the suggestion to combine references. *Al-Site Corp. v. VSI Int'l Inc.*, 174 F.3d 1308, 50 USPQ2d 1161 (Fed. Cir. 1999).

"In determining the propriety of the Patent Office case for obviousness in the first instance, it is necessary to ascertain whether or not the reference teachings would appear to be sufficient for one of ordinary skill in the relevant art having the reference before him to make the proposed substitution, combination, or other modification." *In re Linter*, 458 F.2d 1013, 1016, 173 USPQ 560, 562 (CCPA 1972).

Obviousness can be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to combine or modify the references. "The test for an implicit showing is what the combined teachings, knowledge of one of ordinary skill in the art, and the nature of the problem to be solved as a whole would have suggested to those of ordinary skill in the art." *In re Kotzab*, 217 F.3d 1365, 1370, 55 USPQ2d 1313, 1317 (Fed. Cir. 2000). See also *In re Lee*, 277 F.3d 1338, 1342-44, 61 USPQ2d 1430, 1433-34 (Fed. Cir. 2002) (discussing the importance of relying on objective evidence and making specific factual findings with respect to the motivation to combine references); *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988); *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992).

2. *Distinctions between the present invention and the prior art*

Applicants respectfully submit that the prior art does not disclose or suggest a detergent that contains substantially no surfactant as recited in the present claims. Accordingly, all of the claim limitations are not included in the prior art, and a *prima facie* case of obviousness is not established, since the cited art fails to provide any reason or rationale to those of ordinary skill in the art that would allow them to arrive at the instant invention as claimed. Applicants respectfully submit that this rejection must therefore be withdrawn.

Furthermore, even if *arguendo*, a hypothetical *prima facie* case of obviousness were assumed to exist; detergent particles containing no surfactant are disclosed, for example, in each of Detergent Additive Particles 1, 3, and 5 at Table 1, of the present specification as showing unexpectedly excellent results in high dissolution rate. Applicants also respectfully refer the USPTO to Table 3 of the present specification which shows excellent distributivity of composite detergent particles using the presently claimed detergent additive particles. Applicants submit that the test data reported in Tables 1 and 3 of the instant specification fully rebut any hypothetical case of *prima facie* obviousness, and strongly support the patentability of the instant claims.

Applicants respectfully submit that all of the pending claims are herein demonstrated as allowable. An early reconsideration and Notice of Allowance are respectfully requested.

Conclusion

In view of the above remarks, it is submitted that claims 1-6, 8, and 16 are fully allowable under the provisions of Title 35 of the United States Code, and that a Notice of Allowance should be allowed to issue at present.

Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact the undersigned at the telephone number indicated below, to conduct an interview in an effort to expedite prosecution in connection with the present application.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37.C.F.R. §§1.16 or 1.14; particularly, extension of time fees.

Dated: March 10, 2008

Respectfully submitted,

By 

John W. Bailey
Registration No.: 32,881
BIRCH/STEWART, KOLASCH & BIRCH, LLP
8110 Gatehouse Road
Suite 100 East
P.O. Box 747
Falls Church, Virginia 22040-0747
(703) 205-8000
Attorney for Applicant

jmc